

AMENDED IN SENATE MARCH 23, 2006

SENATE BILL

No. 1297

Introduced by Senator Battin

February 15, 2006

An act to amend Section ~~288~~ 272 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1297, as amended, Battin. Crime.

Existing law provides that an adult stranger who is over 21 years of age who contacts or communicates with a minor who is less than 14 years of age, who knew or should have known that the minor was less than 14 years of age for the purpose of luring that minor away from his or her home or any place where the minor is known to be located for any purpose without the consent of the minor's parent or guardian punishable as an infraction or a misdemeanor.

This bill would provide that every person who persuades, coerces, or invites or attempts to persuade, coerce, or invite a person who he or she knew or should have known is a minor, or a person he or she believes is a minor, by any means to engage in prostitution, any lewd or lascivious act, or any sexual activity, with specified intent, is punishable by imprisonment in the state prison for 3, 6, or 8 years.

Because this bill would create a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides that any person who commits any lewd or lascivious act upon the body of a child who is under 14 years of age with specified intent is punishable by imprisonment in the state prison for 3, 6, or 8 years.~~

~~This bill would make a technical, nonsubstantive change to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 272 of the Penal Code is amended to*
2 *read:*

3 272. (a) (1) Every person who commits any act or omits the
4 performance of any duty, which act or omission causes or tends
5 to cause or encourage any person under ~~the age of 18 years~~ 18
6 years of age to come within the provisions of Section 300, 601,
7 or 602 of the Welfare and Institutions Code or which act or
8 omission contributes thereto, or any person who, by any act or
9 omission, or by threats, commands, or persuasion, induces or
10 endeavors to induce any person under ~~the age of 18 years~~ 18
11 years of age or any ward or dependent child of the juvenile court
12 to fail or refuse to conform to a lawful order of the juvenile court,
13 or to do or to perform any act or to follow any course of conduct
14 or to so live as would cause or manifestly tend to cause that
15 person to become or to remain a person within the provisions of
16 Section 300, 601, or 602 of the Welfare and Institutions Code, is
17 guilty of a misdemeanor and upon conviction thereof shall be
18 punished by a fine not exceeding two thousand five hundred
19 dollars (\$2,500), or by imprisonment in ~~the a~~ county jail for not
20 more than one year, or by both fine and imprisonment in a county
21 jail, or may be released on probation for a period not exceeding
22 five years.

23 (2) For purposes of this subdivision, a parent or legal guardian
24 to any person under ~~the age of 18 years~~ 18 years of age shall
25 have the duty to exercise reasonable care, supervision, protection,
26 and control over their minor child.

(b) (1) An adult stranger who is 21 years of age or older, who knowingly contacts or communicates with a minor who is under 14 years of age, who knew or reasonably should have known that the minor is under 14 years of age, for the purpose of persuading and luring, or transporting, or attempting to persuade and lure, or transport, that minor away from the minor's home or from any location known by the minor's parent, legal guardian, or custodian, to be a place where the minor is located, for any purpose, without the express consent of the minor's parent or legal guardian, and with the intent to avoid the consent of the minor's parent or legal guardian, is guilty of an infraction or a misdemeanor, subject to subdivision (d) of Section 17.

(2) This subdivision shall not apply in an emergency situation.

(3) As used in this subdivision, the following terms are defined to mean:

(A) "Emergency situation" means a situation where the minor is threatened with imminent bodily harm, emotional harm, or psychological harm.

(B) "Contact" or "communication" includes, but is not limited to, the use of a telephone or the Internet, as defined in Section 17538 of the Business and Professions Code.

(C) "Stranger" means a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization, as defined in subdivision (e) of Section 6600 of the Welfare and Institutions Code.

(D) "Express consent" means oral or written permission that is positive, direct, and unequivocal, requiring no inference or implication to supply its meaning.

(4) This section shall not be interpreted to criminalize acts of persons contacting minors within the scope and course of their employment, or status as a volunteer of a recognized civic or charitable organization.

(5) This section is intended to protect minors and to help parents and legal guardians exercise reasonable care, supervision, protection, and control over minor children.

(c) Every person who knowingly persuades, induces, entices, coerces, allures, solicits, or invites, or attempts to persuade, induce, entice, coerce, allure, solicit, or invite a person who is or that he or she should have known is, or a person that he or she

1 *believes is a minor, by any means, including, but not limited to,*
2 *in person, through an agent or agency, over the telephone, by*
3 *mail, by computer or over the internet, or by any other electronic*
4 *means, to engage in prostitution, any lewd or lascivious act, or*
5 *any sexual activity, including, but not limited to, those acts*
6 *defined in Sections 261, 261.5, 266, 266a, 266b, 266i, 266j, 269,*
7 *272, 286, 286.5, 288, 288a, 288.2, 289, 311.3, 314, and 647.6,*
8 *with the intent to arouse or satisfy the sexual desires of the minor*
9 *or the person, or both, is guilty of a felony and shall be punished*
10 *by imprisonment in the state prison for three, six, or eight years.*

11 *(1) As used in this subdivision, "minor" means a person who*
12 *is less than 18 years of age or who has been represented to be a*
13 *person who is less than 18 years of age.*

14 *(2) It is not a defense to the crime specified in this subdivision*
15 *that a federal, state, or local law enforcement or peace officer*
16 *was posing as a minor.*

17 *SEC. 2. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the*
22 *penalty for a crime or infraction, within the meaning of Section*
23 *17556 of the Government Code, or changes the definition of a*
24 *crime within the meaning of Section 6 of Article XIII B of the*
25 *California Constitution.*

26 ~~SECTION 1. Section 288 of the Penal Code is amended to~~
27 ~~read:~~

28 ~~288. (a) Any person who willfully and lewdly commits any~~
29 ~~lewd or lascivious act, including any of the acts constituting other~~
30 ~~crimes provided for in Part 1, upon or with the body, or any part~~
31 ~~or member thereof, of a child who is under 14 years of age, with~~
32 ~~the intent of arousing, appealing to, or gratifying the lust,~~
33 ~~passions, or sexual desires of that person or the child, is guilty of~~
34 ~~a felony and shall be punished by imprisonment in the state~~
35 ~~prison for three, six, or eight years.~~

36 ~~(b) (1) Any person who commits an act described in~~
37 ~~subdivision (a) by use of force, violence, duress, menace, or fear~~
38 ~~of immediate and unlawful bodily injury on the victim or another~~
39 ~~person, is guilty of a felony and shall be punished by~~
40 ~~imprisonment in the state prison for three, six, or eight years.~~

1 ~~(2) Any person who is a caretaker and commits an act~~
2 ~~described in subdivision (a) upon a dependent person by use of~~
3 ~~force, violence, duress, menace, or fear of immediate and~~
4 ~~unlawful bodily injury on the victim or another person, with the~~
5 ~~intent described in subdivision (a), is guilty of a felony and shall~~
6 ~~be punished by imprisonment in the state prison for three, six, or~~
7 ~~eight years.~~

8 ~~(c) (1) Any person who commits an act described in~~
9 ~~subdivision (a) with the intent described in that subdivision, and~~
10 ~~the victim is a child of 14 or 15 years, and that person is at least~~
11 ~~10 years older than the child, is guilty of a public offense and~~
12 ~~shall be punished by imprisonment in the state prison for one,~~
13 ~~two, or three years, or by imprisonment in a county jail for not~~
14 ~~more than one year. In determining whether the person is at least~~
15 ~~10 years older than the child, the difference in age shall be~~
16 ~~measured from the birth date of the person to the birth date of the~~
17 ~~child.~~

18 ~~(2) Any person who is a caretaker and commits an act~~
19 ~~described in subdivision (a) upon a dependent person, with the~~
20 ~~intent described in subdivision (a), is guilty of a public offense~~
21 ~~and shall be punished by imprisonment in the state prison for~~
22 ~~one, two, or three years, or by imprisonment in a county jail for~~
23 ~~not more than one year.~~

24 ~~(d) In any arrest or prosecution under this section or Section~~
25 ~~288.5, the peace officer, district attorney, and the court shall~~
26 ~~consider the needs of the child victim or dependent person and~~
27 ~~shall do whatever is necessary, within existing budgetary~~
28 ~~resources, and constitutionally permissible to prevent~~
29 ~~psychological harm to the child victim or to prevent~~
30 ~~psychological harm to the dependent person victim resulting~~
31 ~~from participation in the court process.~~

32 ~~(e) Upon the conviction of any person for a violation of~~
33 ~~subdivision (a) or (b), the court may, in addition to any other~~
34 ~~penalty or fine imposed, order the defendant to pay an additional~~
35 ~~fine not to exceed ten thousand dollars (\$10,000). In setting the~~
36 ~~amount of the fine, the court shall consider any relevant factors,~~
37 ~~including, but not limited to, the seriousness and gravity of the~~
38 ~~offense, the circumstances of its commission, whether the~~
39 ~~defendant derived any economic gain as a result of the crime, and~~
40 ~~the extent to which the victim suffered economic losses as a~~

1 result of the crime. Every fine imposed and collected under this
2 section shall be deposited in the Victim-Witness Assistance Fund
3 to be available for appropriation to fund child sexual exploitation
4 and child sexual abuse victim counseling centers and prevention
5 programs pursuant to Section 13837.

6 If the court orders a fine imposed pursuant to this subdivision,
7 the actual administrative cost of collecting that fine, not to
8 exceed 2 percent of the total amount paid, may be paid into the
9 general fund of the county treasury for the use and benefit of the
10 county.

11 (f) For purposes of paragraph (2) of subdivision (b) and
12 paragraph (2) of subdivision (e), the following definitions apply:

13 (1) “Caretaker” means an owner, operator, administrator,
14 employee, independent contractor, agent, or volunteer of any of
15 the following public or private facilities when the facilities
16 provide care for elder or dependent persons:

17 (A) Twenty-four hour health facilities, as defined in Sections
18 1250, 1250.2, and 1250.3 of the Health and Safety Code.

19 (B) Clinics.

20 (C) Home health agencies.

21 (D) Adult day health care centers.

22 (E) Secondary schools that serve dependent persons and
23 postsecondary educational institutions that serve dependent
24 persons or elders.

25 (F) Sheltered workshops.

26 (G) Camps.

27 (H) Community care facilities, as defined by Section 1402 of
28 the Health and Safety Code, and residential care facilities for the
29 elderly, as defined in Section 1569.2 of the Health and Safety
30 Code.

31 (I) Respite care facilities.

32 (J) Foster homes.

33 (K) Regional centers for persons with developmental
34 disabilities.

35 (L) A home health agency licensed in accordance with
36 Chapter 8 (commencing with Section 1725) of Division 2 of the
37 Health and Safety Code.

38 (M) An agency that supplies in-home supportive services.

39 (N) Board and care facilities.

1 ~~(O) Any other protective or public assistance agency that~~
2 ~~provides health services or social services to elder or dependent~~
3 ~~persons, including, but not limited to, in-home supportive~~
4 ~~services, as defined in Section 14005.14 of the Welfare and~~
5 ~~Institutions Code.~~

6 ~~(P) Private residences.~~

7 ~~(2) “Board and care facilities” means licensed or unlicensed~~
8 ~~facilities that provide assistance with one or more of the~~
9 ~~following activities:~~

10 ~~(A) Bathing.~~

11 ~~(B) Dressing.~~

12 ~~(C) Grooming.~~

13 ~~(D) Medication storage.~~

14 ~~(E) Medical dispensation.~~

15 ~~(F) Money management.~~

16 ~~(3) “Dependent person” means any person who has a physical~~
17 ~~or mental impairment that substantially restricts his or her ability~~
18 ~~to carry out normal activities or to protect his or her rights,~~
19 ~~including, but not limited to, persons who have physical or~~
20 ~~developmental disabilities or whose physical or mental abilities~~
21 ~~have significantly diminished because of age. “Dependent~~
22 ~~person” includes any person who is admitted as an inpatient to a~~
23 ~~24-hour health facility, as defined in Sections 1250, 1250.2, and~~
24 ~~1250.3 of the Health and Safety Code.~~

25 ~~(g) Paragraph (2) of subdivision (b) and paragraph (2) of~~
26 ~~subdivision (c) apply to the owners, operators, administrators,~~
27 ~~employees, independent contractors, agents, or volunteers~~
28 ~~working at these public or private facilities and only to the extent~~
29 ~~that the individuals personally commit, conspire, aid, abet, or~~
30 ~~facilitate any act prohibited by paragraph (2) of subdivision (b)~~
31 ~~and paragraph (2) of subdivision (c).~~

32 ~~(h) Paragraph (2) of subdivision (b) and paragraph (2) of~~
33 ~~subdivision (c) do not apply to a caretaker who is a spouse of, or~~
34 ~~who is in an equivalent domestic relationship with, the dependent~~
35 ~~person under care.~~